

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JOE HOWARD MCCLAIN,)	
)	
Petitioner,)	
)	
v.)	No. 2:19-cv-00580-JPH-DLP
)	
DICK BROWN,)	
)	
Respondent.)	

Order Dismissing Petition for Lack of Subject Matter Jurisdiction

Petitioner Joe Howard McClain filed this 28 U.S.C. § 2254 petition challenging his 1978 rape and sodomy convictions in Allen County, Indiana, Case No. 02C01-7707-CF-000094. Mr. McClain already has brought a § 2254 habeas petition in this Court challenging the same convictions in Case No. 2:07-cv-00123-LJM-WTL. That petition was dismissed for the same reason this one must be dismissed—lack of subject matter jurisdiction.

When there has already been a decision on the merits in a federal habeas action, to obtain another round of federal collateral review a petitioner requires permission from the Court of Appeals under 28 U.S.C. § 2244(b). *See Altman v. Benik*, 337 F.3d 764, 766 (7th Cir. 2003). This statute “creates a ‘gatekeeping’ mechanism for the consideration of second or successive [habeas] applications in the district court.” *Felker v. Turpin*, 518 U.S. 651, 657 (1996). Indeed, a district court does not have subject matter jurisdiction over a second or successive petition. *In re Page*, 170 F.3d 659, 661 (7th Cir. 1999). The “district court *must* dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for the filing.” *Page*, 170 F.3d at 661.

There is no indication that Mr. McClain has obtained leave from the Seventh Circuit to file this successive petition. Accordingly, this action is **dismissed** for lack of jurisdiction. Mr. McClain must seek authorization from the Seventh Circuit Court of Appeals before this Court may consider his petition. Final Judgment in accordance with this decision shall issue, and **all pending motions shall be vacated.**

As the Seventh Circuit has noted, Mr. McClain has a “long and tortured” history of seeking collateral relief in both state and federal courts, having filed eleven petitions in federal court before the district court dismissed his petition with prejudice. *McClain v. Deuth*, 1998 WL 516804 at *1 (7th Cir. June 24, 1998) (unpublished order) (affirming dismissal). Further filings in this Court challenging these convictions may result in sanctions, including filing restrictions.

SO ORDERED.

Date: 1/13/2020



James Patrick Hanlon
United States District Judge
Southern District of Indiana

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